IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

WP(C).No. 23890 of 2007(R)

PETITIONER:

M.VIJAYAKUMARI, W/O.SUDEVAN, AGED 42 YEARS, T-13, PWD QUARTERS, VADAKKUMTHARA, PALAKKAD.

BY ADV. SRI.P.CHANDRASEKHAR

RESPONDENTS:
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1. **THE SUPERINTENDENT OF POLICE, PALAKKAD.**

2. **THE CIRCLE INSPECTOR OF POLICE, PALAKKAD TOWN SOUTH POLICE STATION, PALAKKAD.**

3. **THE SUB INSPECTOR OF POLICE, PALAKKAD TOWN SOUTH POLICE STATION, PALAKKAD.**

4. **CHANDRA, S/O.KANNANKODE VELAYUDHAN, 17/37, KUNNATHUR MEDU P.O., NEAR SOUTH POLICE STATION, PALAKKAD.**

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P
BY GOVERNMENT PLEADER SRI.P.A.SALIM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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W.P.(C) NO.23890/2007

APPENDIX

PETITIONER'S EXHIBITS

E.XT.P1:- COPY OF THE REGISTERED SALE DEED NO.5430/03 DT. 5.11.03.

EXT.P2:- COPY OF THE DEATH CERTIFICATE OF THE THANKAMANI, MOTHER OF THE 4TH RESPONDENT.

EXT.P3:- COPY OF THE COMPLAINT OF KALUKUTTY SISTER OF SWAMINATHAN BEFORE THE 2ND RESPONDENT.

EXT.P4:- COPY OF THE JUDGMENT DT. 19.1.01 IN OP. NO.32260/2000 OF THIS HONOURABLE COURT.

EXT.P5:- COPY OF THE COMPLAINT VELAYUDHAN S/O. SWAMINATHAN BEFORE THE 3RD RESPONDENT.

EXT.P6:- COPY OF THE COMPLAINT DT. 19.7.07 OF THE PETITIONER TO THE 3RD RESPONDENT.

EXT.P7:- COPY OF THE PETITION DT. 30.7.07 OF THE PETITIONER TO THE 2ND RESPONDENT.

RESPONDENTS EXHIBITS

EXT.R4(a):- COPY OF THE JUDGMENT DT. 10.2.96 PASSED IN OS. NO.50/93 ON THE FILE OF SUBORDINATE JUDGE'S COURT, PALAKKAD.

EXT.R4(b):- COPY OF THE WILL DT. 27.3.96 EXECUTED BY SWAMINATHAN.

EXT.R4(c):- COPY OF THE PLAINT IN OS. NO.415/06 ON THE FILE OF SUBORDINATE JUDGE'S COURT, PALAKKAD.

/TRUE COPY/

P.A. TO JUDGE

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K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

Writ Petition (C) No.23890 of 2007-R

Judgment

Balakrishnan Nair, J.

The petitioner is residing in the PWD quarters, Palakkad, along with her husband, who is a Peon in the PWD. She purchased 4 cents of land in RS No.3302/2 of Palakkad No.3 village as per Ext.P1 sale deed from one Shri.Velayudhan. She effected mutation of the property. According to her, she is in possession of the property. The property originally belonged to one Shri.Swaminathan. His whereabouts are not known and it is presumed that he is dead. Shri.Velayudhan, the assignor of the petitioner is his son. When the petitioner and her family members are going to the above said property, the 4th respondent is abusing and threatening them. Therefore, the petitioner has preferred Ext.P6 representation before the third respondent and Ext.P7 representation before the 2nd respondent. The 4th respondent is the son of Smt.Thankamani, whom the said Swaminathan married after the death of his first wife. So, according to the petitioner, the 4th respondent has no right over the property. Therefore, the Police may be directed by this Court to afford

protection to her and her family members by taking appropriate action on Exts.P6 and P7.

2. The 4th respondent has filed a counter affidavit. According to the said respondent, Shri.Swaminathan has executed a will in favour of his mother and the 4th respondent, as per which, the disputed item of property was to devolve on them on his death. He went on pilgrimage in 1993, when he was aged 93. So, he must be dead now and so, the said property has devolved on them. The 4th respondent along with his family is residing there. Shri.Velayudhan, the assignor of the property has no legal right over the said property. It is also submitted that the 4th respondent has moved the competent civil court to declare that Ext.P1 sale deed is null and void and it is a sham document. The petitioner is trying to oust the 4th respondent and his family from the above property. So, it is a civil dispute in which the Police may not be asked to interfere, it is submitted. The learned Government Pleader upon instruction submitted that since the dispute involved was a civil dispute, the Police did not interfere in the matter.

3. Having regard to the nature of the allegations and counter allegations, we feel that this Court should not order any protection to the petitioner to enter

or enjoy the property covered by Ext.P1 until the civil dispute between her and the 4th respondent is settled by the competent civil court. But this Judgment will not stand in the way of the petitioner moving the competent civil court and getting appropriate orders in her favour and also getting further orders from the said court against the Police to enforce its orders, if any obtained by her. It is not in dispute that the petitioner or her family members do not go to the disputed property, there is no question of threat or violence against them. Having regard to the facts of the case, the Writ Petition is closed without prejudice to the contentions of both sides.

K.BALAKRISHNAN NAIR,JUDGE

10.10.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

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